Supreme Court, U.S.
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(2)

No. 07-1396

IN THE

SUPREME COURT OF THE UNITED STATES

A. M. ELSHINNAWY

Petitioner

v.

COMMISSIONER OF
SOCIAL SECURITY
ADMINISTRATION

Respondent

On Petition For Writ of Certiorari
To The United States Court of Appeals
For The Third Circuit

# PETITION FOR REHEARING

A. M. ELSHINNAWY
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## BRIEF SUMMARY OF FACTS PERTAINING TO THE CASE

1 - 42 U.S.C.§415 (a) (7) was enacted to prevent individuals receiving pension based on their noncovered, by Social Security (SS), employment from obtaining full old-age SS benefits based on their covered work history and calculated by the average Indexed Monthly Earnings method.

2 – Full old-age benefits are reduced by various amounts depending on the number of years the individual has, each of which is a benefit computation year and is CREDITED WITH COVERED EARNINGS (NOT A YEAR OF WORK IN A JOB WITH COVERED EARNINGS).

3 – To facilitate the implementation of this complex benefit program, Social Security Commissioner (SSC) adopted 20 CFR 404.213 which has nine exceptions for applying benefit reductions none of which addresses the minimum total SS contributions required to avoid reductions which rendered the benefit calculation procedure unconstitutional.

4 – Petitioner's total Indexed Earnings was calculated by SS to be 627,985.51 with 35 benefit computation years rendering an average Indexed Monthly Earnings of 1495.00.

5 – The Administrative Law Judge (ALJ) described the procedure by stating:

"The revised benefit formula eliminates the windfall in benefits for individuals who have only minimal SS coverage and will receive a pension based on years of work in non-covered employment."

6 – The United States Court of Appeals states in its Opinion:

"Because Congress has delegated to the Commissioner the responsibility to administer complex benefits programs, we defer to the Commissioner's interpretation of Social Security legislation, as long as it is reasonable and not arbitrary and capricious."

7 – According to 20 CFR 404.213, an individual with similar pension and 35 benefit computation years with "substantial covered earnings," which total 181,500.00, would be exempt from benefit reduction whereas petitioner with 627,985.51 covered earnings would be subject to benefit reduction.

8 – Although the implementation of 42 U.S.C.§ 415 (a) (7) through the Commissioner's interpretation of SS Law with 20 CFR 404.213 resulted in an unjust and unconstitutional situation as is explained in paragraph 7 hereabove, the United States Court of Appeals did not consider the Commissioner's interpretation to be unreasonable and arbitrary and capricious, as indicated in paragraph 6 hereabove or it just chose to defer the decision to a higher authority.

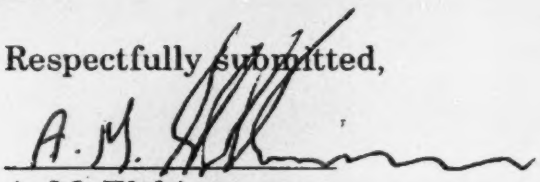
## REASONS FOR ACCEPTING THE REHEARING AND GRANTING THE PETITION

The summary of the facts presented above shows that this case dealing with the petitioner's Social Security benefits which was started at retirement in January 1998 went in front of many layers of decision makers from the Administrative Law Judge to the rehearing requested from the United States Court of Appeals. Each decision maker in the process deferred the decision to the higher authority. As I presented the case to this Court, I had hoped that a decision is imminent. Regretfully, this Court looked the other way toward an important issue such as setting the just standard toward this aspect of old-age Social Security benefits which many, many people depend on for survival. If this petition does not fulfill its goals, would this Court be satisfied knowing that an unjust law dealing with vital Social Security benefits issue was left, arbitrarily, uncorrected after someone attempted to correct it for 11 years?

## CONCLUSION

The petitioner respectfully requests that this Court will put this case on the right track by granting the writ of certiorari so that a just decision can be made.

Respectfully submitted,



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Dated: October 28, 2008

CERTIFICATE OF COMPLIANCE

No. 07-1396

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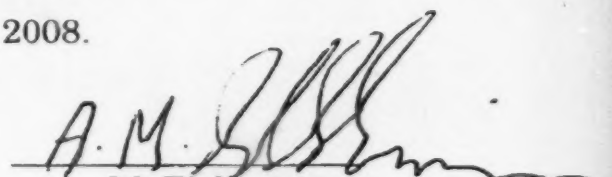
As required by Supreme Court Rule 44.2, I certify that the petition for rehearing is restricted to substantial grounds not previously mentioned and that it is presented in good faith and not for delay.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 28, 2008.



A. M. Elshinnawy